

**Draft NPDES Phase II Stormwater Permit  
For Eastern Washington**

**Formal Comments Submitted by the City of Richland**

*Drafted by:*

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**Specific Comments**

*(City of Richland comments are in italics)*

1. Page 5 of 50, Section S2.C

“This permit authorizes discharges from emergency fire fighting activities, unless the discharges from activities are identified as significant sources of pollutants to waters of the State.”

*40 CFR 122.26(b)(2) exempts discharges resulting from fire fighting activities. A local agency with a fire department could be subject to third party lawsuits if they render no assistance during a fire emergency.*

2. Page 6 of 50, Section S4.A

*The Permit states that RCW 90.48.520 prohibits discharge of toxicants to waters of the state. The permit fact sheet quotes the RCW as applying to “wastewater”. Does RCW support the definition of stormwater as “wastewater”? It appears that Ecology is extending the application of RCW 90.48 beyond its intent and holding stormwater to quantitative water quality standards not intended by the Clean Water Act.*

3. Page 6 of 50, Section S4.C

“This Permittee shall reduce the discharge of pollutants to the maximum extent practicable (MEP).”

*If the terms and conditions of the Phase II permit are met by the Permittee than hasn't MEP been fulfilled? The paragraph should be re-written to state that.*

4. Page 8 of 50, Section S5.A.4.a

- a. "From the effective date of this permit, each Permittee shall have an ongoing process for gathering, maintaining and using information to conduct planning, set priorities, track the development ....."

*The paragraph should read as follows:*

- a. *"At the end of the first permit year, each Permittee shall have an ongoing process for gathering, maintaining and using information to conduct planning, set priorities, track the development ....."*

*No entity will have a program in place with the information you are requiring from the effective date of the Permit. Give the local agencies a year to develop the program*

5. Page 8 of 50, Section S5.A.4.a.ii

This section requires Permittees to track and report the cost of their SWMP. The permit fact sheet says "The cost and resources available to implement the SWMP are not part of the basis for determining MEP for this permit term. However, data on SWMP-related expenditures are needed to evaluate the MEP standard established in future permits". The fact sheet gives a very detailed breakdown of Ecology's cost reporting expectations, concluding with the statement that "Ecology is not expecting jurisdictions to make accounting changes to track these costs, nor are Permittees expected to differentiate between current spending on SWMP implementation versus new spending to meet the requirements of the permit."

*Since the cost of implementation is not the basis for determining MEP, and since the permit complies with the Clean Water Act, Ecology should remove the financial reporting requirement. The fact sheet states that Ecology intends to set an MEP standard with regard to program resources in future permit cycles. This approach directly contradicts the local jurisdiction's authority and flexibility as allowed in the Clean Water Act. Ecology should indicate by what statutory authority it can require this information and to what program objective it applies.*

6. Page 8 of 50, Section S5.A.4.b

The permit requires the Permittee to include a discussion of the Permittee's evaluation of the effectiveness of the SWMP components implemented during the reporting period and earlier.

*Since the permit is based on the premise that implementation of BMP's is effective in meeting stormwater quality standards, and since the permit requires implementation of Ecology pre-qualified BMP's, this requirement does not seem*

*useful and should be eliminated. The monitoring requirements included in Section S8 of the permit will presumably be the basis for future evaluation of BMP effectiveness. The annual report of BMP's implemented should suffice to document program compliance with the permit. Further speculation on BMP effectiveness will not be helpful.*

7. Page 10 of 50, Section S5.B.3.a.iii

The permit requires submission of agency mapping information to Ecology.

*If Ecology wants to document the location of outfalls or other discharges, then that would seem an appropriate request. The requirements should be rewritten around that issue. General map submissions do not seem to relate to any relevant permit requirement and the requirement should be removed.*

8. Page 10 of 50, Section S5.B.3.b.i

The permit requires an ordinance prohibiting illicit discharges on private property.

*Presumably this ordinance shall prohibit illicit discharges to the MS4, when an element of the MS4 resides on private property. This language should be clarified that only illicit discharges to the MS4 are prohibited.*

9. Page 9 of 50, Section S5.B.2.a

"No later than one year from the effective date of this permit ....create opportunities for the public to participate in the decision making processes involving the development, implementation and update of the SWMP..."

*This paragraph has the potential to expose a local agency to third party lawsuits. The local governing body has the final say on development and implementation of the SWMP and those decisions are based on finances, staff and local resources. This paragraph gives local public groups the ability to make decisions not based on finances, staff or local resources. These decisions could be prefaced with the threat of a lawsuit if their decisions are not acted upon.*

*Paragraph should read "Not later than one year from the effective date of this permit...create opportunities for the public to participate in the public process involving the development, implementation and update of the SWMP based on local agency finances, staff and resources, including development..."*

10. Page 10 of 50, Section S5.B.3.a.iii

"....and/or other entities covered under this permit."

*Who are the other entities? Does this mean that Pullman, Yakima or Spokane could request copies of our maps or mapping information?*

11. Page 11 of 50, Section S5.B.3.a.iii, Bullets 3-6

*Do these items conflict with the Construction Stormwater General Permit (CSGP) that requires a CSGP be issued for these discharges?*

Page 11 of 50, Section S5.B.3.b.iv, Bullet 1

*“Discharges from potable water sources, including water line flushing, hyperchlorinated water line flushing, fire hydrant system flushing and pipeline hydrostatic test water.”*

*“The following discharges are exempt from discharge prohibitions established by this ordinance: water line flushing or other potable water sources,...” EPA Model Ordinances Language*

*Fire hydrant flow testing is performed annually to maintain the municipalities fire ratings issued by the Fire Rating s Bureau. These ratings affect the property insurance rates. It is important to flow test hydrants to determine whether there is adequate flow for fire fighting purposes and whether the flow meets the Uniform Fire Code.*

Page 11 of 50, Section S5.B.3.b.iv, Bullet 1

*“...hyperchlorinated water line flushing...”*

*This item was discussed at the last eastern Washington Stormwater meeting and it was agreed the AWWA specification was to be added to this section. It’s a little difficult to respond to this when we know what is supposed to be here but have not seen it.*

Page 11 of 50, Section S5.B.3.b.iv, Bullet 2

*“...landscape irrigation runoff must be reduced...”*

*This statement implies a continuous water quality impact from landscape runoff, no matter at what volume or content. An across the board and ongoing requirement to reduce is neither achievable nor linked to any program objective.*

Page 11 of 50, Section S5.B.3.b.iv, Bullet 3

*“...pH-adjusted if necessary...”*

*The requirement for pH adjustment should be removed or better defined. De-chlorination techniques that do not create adverse pH conditions should be promoted and those with adverse pH impacts restricted or prohibited.*

Page 11 of 50, Section S5.B.3.b.iv, Bullet 3

*“...pH adjusted if necessary, re-oxygenated...”*

*The requirement for pH adjustment and re-oxygenation should be removed. These provisions are in essence numeric water quality standards and are not consistent with the BMP approach in the permit.*

Page 11 of 50, Section S5.B.3.b.iv, Bullet 4

*“...water used to control dust...”*

*Water is an essential tool used to control dust during windstorms and dust storms in eastern Washington, specifically the Central Basin. The local Clean Air Authority can fine any agency with endangering the health of its citizens for not controlling dust from a construction project. It is not possible to minimize the amount of dust control water used when regional climatic conditions routinely produce winds up to 25 mph with gusts to 50 mph.*

*This paragraph also requires Permittees to reduce the prohibited uses. The language regarding reducing these uses should be removed. Continuous reduction is not achievable. The public education BMP informing the public of the potential impacts of these uses should suffice. In addition the language about minimizing street wash water should be eliminated for the same reason. Minimizing is a vague requirement subject to interpretation. The operations plan required elsewhere in the permit should suffice to cover the intent of this language.*

Page 11 of 50, Section S5.B.3.b.iv, Bullet 4

*“...At active construction sites, street sweeping must be performed prior to washing the street.”*

*Is this the CSGP or the Phase II permit? Already said in the CSGP.*

12. Page 12 of 50, Section S5.B.3.c.i

*Re-write this paragraph to say, “Every catch basin and manhole has the potential for an illicit discharge.” This is more the truth and shorter and relieves the local agency of additional research when one knows that every manhole and catch basin has the potential to have an illegal substance dumped in it.*

The permit describes compliance as prioritizing discharged water bodies for inspection.

*The requirement based on water bodies is bound to create unequal compliance workload among Permittees. For instance, Richland has three surface water bodies into which stormwater is discharged, but we have more than 30 outfalls. The compliance criteria described in the permit would require Richland to inspect all of its outfalls within the permit cycle, while another agency with 10 outfalls into 10 water bodies would inspect only 40% of its discharges. The City would suggest a permit condition that requires inspection of all surface water outfalls during the permit cycle.*

13 Page 12 of 50, Section S5B.3.c.ii

The second and third paragraph on page 32 of the Permit **Fact Sheet** refers to this section on field assessments and includes the statement “As an ongoing activity, but not as a requirement of the permit, Permittees should identify areas of industrial activity served by the MS4 that require coverage under the Industrial General Permit, determine whether coverage has been obtained, and inform the Department if coverage has not been obtained.”

*Ecology should eliminate all statements in the fact sheet that state that Permittees should perform a function not required by the permit. Ecology indicates in several places that it does not have the resources to regulate stormwater in the manner intended by the Clean Water Act and has elected to structure its permit to eliminate the need for additional resources within Ecology to manage the program. In this case Ecology is suggesting that local jurisdictions carry an enforcement role for a state permit without resources to support the effort. Local jurisdictions are struggling to fund their permit requirements and Richland is not willing to take on the additional burden of enforcing a State permit for which it has no statutory obligation.*

14. Page 13 of 50, Section S5.B.3.c.v

The permit lays out enforcement program requirements for local illicit discharge ordinances.

*Since the permit provides a long list of discharges to be prohibited by the ordinance, including landscape irrigation runoff and street wash water, these enforcement program requirements should be narrowed in their application to illicit industrial or commercial discharges and formal investigations and enforcements of normal residential activity should not be included. Applying a strict enforcement program calendar to discharges that carry requirements to*

*reduce and minimize undesirable discharges is bound to create confusion and unenforceable ordinances. This compliance program is best applied to industrial and commercial illicit discharges. If Ecology will require an enforcement program against the full list of prohibited discharges it must include criteria more flexible and applicable to the severity and type of violation.*

15. Page 13 of 50, Section S5.B.3.e

“Permittees shall adopt and implement ... public education efforts. A summary of this information shall be included in the Permittees’ annual reports.”

*Where in the annual report is this to be reported?*

16. Page 14 of 50, Section S5.B.4

Construction Site Stormwater Runoff Control

*This section should be minimized or referenced to the Construction Stormwater General Permit. This is a duplicative effort. Since the State has a statewide Construction Stormwater Permit that applies within the Phase II entities, the Phase II entities should be allowed to require compliance with the State permit as its BMP-based compliance activity. The public will and should expect that public agencies will not duplicate efforts in so obvious a manner.*

17. Page 15 of 50, Section S5.B.4.b.i

“Prior to construction, Permittees shall review Construction SWPPs ....”

*“An adequate SWPP for construction activity shall be prepared and implemented in accordance with the requirements of this permit beginning with initial soil disturbance and until final stabilization.” Washington State Construction Stormwater General Permit 12-16-05*

*The language in these two permits appears to require review of SWPP’s at different times. Which permit takes precedence?*

18. Page 17 of 50, Section S5.B.4.f

“...The Permittee shall investigate complaints about these sites in the same manner ...”

*This goes beyond the Construction Stormwater General Permit (CSGP). Where does one Permit (CSGP) start and the Phase II Permit take over. This will be confusing to the local agency and the construction world. Once again, either reference the Construction Stormwater General Permit or re-write this section to include everything in the Construction Stormwater General Permit.*

19. Page 18 of 50, Section S5.B.5.a.i Bullet 3

The section requires that records be kept from the time the permit is effective, but allows Permittees to delay program development related to post-construction site stormwater management for several years.

*The records to be kept are not defined and the requirements to inspect sites are confusing. It could be read the records establish a backlog of sites to be inspected when the program inspections begin, thus putting every agency in a catch-up mode with regard to inspections. This should be clarified that inspections are required only of sites permitted after the effective date of the program element, not on the backlog of sites for which records are kept.*

20. Page 23 of 50, Section S5.B.6.a.i

The permit requires an undefined evaluation of existing flood management projects associated with the MS4 to “determine whether changes or additions should be made to improve water quality.”

*The permit is based on the premise that applying the BMP program to existing MS4 facilities will result in improved water quality. This required evaluation suggests a program of capital retrofits that is not required by the MEP standard and should be removed.*

21. Page 28 of 50, Section S6.C.4

The permit suggests that secondary Permittees comply with primary Permittee ordinances applicable in their area.

*This requirement, and that of the primary Permittee ordinance coverage area, requires Permittees to regulate illicit discharges to MS4's over which they have no authority. Ecology should require secondary Permittees to adopt policies and regulations eliminating illicit discharges from their MS4's and suggesting coordination with a primary Permittee as one method of compliance. As it is now written this will create confusion over the correct jurisdiction to regulate illicit discharges.*

22. Page 32 of 50, Section S8.C.1.a.i-iv

The permit describes the monitoring program requirements for jurisdictions of differing size.



*It is impractical to designate land use associated with chosen monitoring points. Stormwater drainage basins are not coincident with land use types. It is unclear what Ecology hopes to document through selection of differing types of drainage areas. Is it expected pollutant loading, proportion of impervious area, or some other criteria. Please clarify.*

23. **Appendix 1** Page 8 of 16

Erosivity Waiver

*Delete all of this section and insert erosivity waiver language from the Construction Stormwater General Permit. As this section is written, two erosivity waivers will be submitted – one to Ecology and one to the local agency. This is a duplication of efforts.*

24. **Fact Sheet** Page 22 of 52, Section S4, Bullet 4

*“Evolve towards eventual compliance with water quality standards through successive permit cycles.”*

*This assumes that local agencies are not in compliance with water quality standards. Has Ecology made a survey of all MS4's to be able to make this statement? This type of statement can open the door to third party lawsuits.*

25. **Fact Sheet** Pages 26-28 of 52, Section S5

S5.A.4.a.ii refers to the costs and resources available to implement the SWMP. The related costs the Permittees are expected to track take two pages to list. At the end of the next paragraph is the statement – “Ecology is not expecting jurisdictions to make accounting changes to track these costs, nor are Permittees expected to differentiate between current spending on SWMP implementation versus new spending to meet the requirements of this permit.

*This is a contradiction. On one hand Ecology is requiring Permittees track the cost of all items on this lengthy list but on the other hand they're saying they don't expect Permittees to make accounting changes to track the costs on this list. So which is it, because any way you go there will be extensive changes made to any Permittees' accounting practices to track these costs.*